

Message Text

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ORIGIN EB-08

INFO OCT-01 NEA-10 ISO-00 L-03 SSO-00 JUSE-00 USIE-00
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DRAFTED BY EB/IFD/BP:TASCHLENKER:VJW
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TO AMEMBASSY ABU DHABI IMMEDIATE
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AMEMBASSY MANAMA IMMEDIATE
AMEMBASSY MUSCAT IMMEDIATE
AMEMBASSY TEHRAN IMMEDIATE

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E.O. 11652: GDS

TAGS: ETRD, ENRG, ZP

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SUBJECT: ANTITRUST: JUSTICE INVESTIGATION OF INTERNA-
TIONAL OIL INDUSTRY

1. SUMMARY: DEPARTMENT OF JUSTICE (DOJ) HAS ISSUED CIVIL
INVESTIGATIVE DEMANDS (CIDS) JULY 28 SEEKING DOCUMENTS AND
ORAL TESTIMONY, IN FURTHERANCE OF AN ANTITRUST INVESTIGA-
TION OF POSSIBLE ANTICOMPETITIVE CONDUCT BY MAJOR DOMESTIC

AND FOREIGN OIL COMPANIES IN THE PRODUCTION AND MARKETING OF CRUDE OIL EMANATING FROM THE PERSIAN GULF. THE INVESTIGATION IS OF POSSIBLE VIOLATIONS OF SECTIONS ONE AND TWO OF THE SHERMAN ACT. END SUMMARY.

2. AMONG THE CIVIL INVESTIGATIVE DEMANDS ISSUED ARE THOSE TO THE FOLLOWING: (A) BRITISH PETROLEUM CO., LTD., A UNITED KINGDOM CORPORATION; (B) COMPAGNIE FRANCAISE DES PETROLES, A FRENCH CORPORATION; (C) ROYAL DUTCH PETROLEUM COMPANY, A NETHERLANDS CORPORATION; AND (D) "SHELL" TRANSPORT AND TRADING COMPANY, A UNITED KINGDOM CORPORATION.

3. IN ADDITION, THE FOLLOWING UNITED STATES COMPANIES RECEIVED CIVIL INVESTIGATIVE DEMANDS: EXXON CORPORATION, GULF OIL CORP., MOBIL OIL CORP., STANDARD OIL CO. OF CALIFORNIA, AND TEXACO, INC. THESE COMPANIES CONTROL FOREIGN SUBSIDIARIES IN VARIOUS COUNTRIES. CIVIL INVESTIGATIVE DEMANDS MAY WELL COMPREHEND DOCUMENTS IN THE POSSESSION OF THOSE FOREIGN SUBSIDIARIES.

4. A CIVIL INVESTIGATIVE DEMAND WAS ALSO SERVED UPON ARABIAN AMERICA OIL COMPANY, ALTHOUGH THAT COMPANY IS NOT, AT PRESENT, A POTENTIAL TARGET OF THE INVESTIGATION.

5. THESE CIVIL INVESTIGATIVE DEMANDS WERE FORWARDED JULY 28 BY INTERNATIONAL AIRMAIL, RETURN RECEIPT REQUESTED, LIMITED OFFICIAL USE

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TO THE HOME OFFICES OF THE MENTIONED COMPANIES AND TO AT LEAST ONE SUBSIDIARY LOCATED IN THE U.S. OF EACH OF THE FOREIGN FIRMS.

6. BACKGROUND FOR ADDRESSEES: DOJ HAS BEEN CONSIDERING AN INVESTIGATION OF THE INTERNATIONAL OIL INDUSTRY FOR SOME TIME. PRELIMINARY EXAMINATION HAS LIMITED THIS INVESTIGATION TO THE PARTICULAR ASPECT MENTIONED ABOVE. AS POSTS ARE AWARE, THERE HAS ALSO BEEN PUBLIC AND CONGRESSIONAL SUPPORT FOR AN ANTITRUST INVESTIGATION. THE INVESTIGATION BEING CONDUCTED BY DOJ IS OF A CIVIL NATURE AND CONCERNS COMMERCIAL COMPANIES SUBJECT TO U.S. LAW. ITS PURPOSE IS TO DETERMINE WHETHER THERE HAS BEEN A VIOLATION OF THE U.S. ANTITRUST LAWS. PURSUANT TO THIS INVESTIGATION, DOJ IS SEEKING CERTAIN INFORMATION FROM THE COMPANIES LISTED ABOVE. IT IS NOT SEEKING TO INVESTIGATE NATIONAL OIL COMPANIES, THAT IS, OIL COMPANIES OWNED BY GOVERNMENTS, AND THOSE NATIONAL OIL COMPANIES WILL NOT REPEAT NOT BE SERVED WITH ANY REQUEST FOR INFORMATION, WILL NOT BE INVESTIGATED, NOR WILL THEY BE ASKED TO PROVIDE ANY INFORMATION. IN ADDITION, THE JUSTICE INVESTIGATION IS NOT REPEAT NOT DIRECTED AT THE ORGANI-

ZATION OF PETROLEUM EXPORTING COUNTRIES (OPEC) PRICE AND SUPPLY POLICIES, NOR DOES IT FOCUS UPON THE 1973 EMBARGO PERIOD.

7. THE COMMENCEMENT OF AN INVESTIGATION DOES NOT REPEAT NOT MEAN THAT A DECISION TO BRING A CASE AGAINST COMPANIES HAS BEEN MADE. THE PURPOSE OF A CIVIL INVESTIGATION IS MERELY TO DETERMINE WHETHER VIOLATIONS HAVE BEEN COMMITTED AND IF A CIVIL COMPLAINT SHOULD BE FILED SEEKING TO ENJOIN THOSE VIOLATIONS. THE ANTITRUST LAWS OF THE UNITED STATES PROHIBIT PRIVATE AGREEMENTS AMONG COMPETITORS SUBJECT TO U.S. JURISDICTION TO UNREASONABLY RESTRAIN FREE TRADE, SUCH AS FIXING PRICES OR LIMITING SUPPLIES. DOJ'S INVESTIGATION IS INTENDED TO DETERMINE WHETHER COMPANIES LIMITED OFFICIAL USE

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SUBJECT TO THE JURISDICTION OF THE U.S. HAVE ENTERED INTO AGREEMENTS TO CONTROL THE PRICE AND SUPPLY OF CRUDE OIL AFTER IT HAS BEEN OBTAINED FROM PERSIAN GULF COUNTRIES.

WHETHER, FOLLOWING THE INVESTIGATION, A CASE IS ULTIMATELY BROUGHT DEPENDS NOT ONLY UPON PROOF OF VIOLATIONS OF U.S. LAW BUT ALSO UPON PROOF OF SUFFICIENT IMPACT UPON U.S. COMMERCE.

8. THE INVESTIGATION FOCUSES ON CONDUCT BY PRIVATE COMPANIES, NOT COMPELLED BY FOREIGN GOVERNMENTS. THE U.S. DOES NOT PROSECUTE COMPANIES FOR ACTIONS THAT ARE GENUINELY COMPELLED BY FOREIGN LAW.

9. SECTIONS ONE AND TWO ARE THE MAIN PROVISIONS OF THE SHERMAN ANTITRUST ACT OF 1890, WHICH IN TURN IS THE KEYSTONE OF U.S. ANTITRUST LEGISLATION. SECTION ONE DECLARES EVERY CONTRACT, COMBINATION OR CONSPIRACY IN RESTRAINT OF INTERSTATE OR FOREIGN COMMERCE OF THE U.S. TO BE ILLEGAL. SECTION TWO DECLARES MONOPOLIZATION, ATTEMPTS TO MONOPOLIZE, AND CONSPIRACIES TO MONOPOLIZE SUCH INTERSTATE OR FOREIGN COMMERCE TO BE ILLEGAL. BECAUSE OF THE GENERAL TERMS OF THESE TWO SECTIONS, A BASIC UNDERSTANDING OF THE MEANING AND SCOPE OF THE SHERMAN ACT REQUIRES A STUDY OF THE SUBSTANTIAL BODY OF ANTITRUST DOCTRINE WHICH HAS DEVELOPED OVER THE COURSE OF THE LAST EIGHTY-FIVE YEARS THROUGH THE PROCESS OF JUDICIAL CONSTRUCTION AND INTERPRETATION. IN COURT DECISIONS SINCE THE LATE 1940'S, THE U.S. COURTS HAVE FOUND THE AMERICAN ANTITRUST LAWS APPLICABLE NOT ONLY TO CONDUCT BY AMERICAN FIRMS ABROAD, EITHER ALONE OR IN CONCERT WITH FOREIGN COMPANIES, BUT HAVE ALSO DECLARED CERTAIN CONDUCT PERFORMED ABROAD SOLELY BY FOREIGN FIRMS TO BE WITHIN THE LIMITED OFFICIAL USE

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U.S. ANTITRUST JURISDICTION IF SUCH CONDUCT HAS A SUBSTANTIAL EFFECT ON THE U.S. FOREIGN COMMERCE AND SUCH EFFECTS ARE INTENDED. A DEFENSE IS AVAILABLE IF THE CONDUCT IS COMPELLED BY A FOREIGN SOVEREIGN.

10. ACTION: ADDRESSEE EMBASSIES ARE REQUESTED TO INFORM HOST GOVERNMENTS OF THE COMMENCEMENT OF DOJ'S INVESTIGATION INTO POSSIBLE U.S. ANTITRUST VIOLATIONS BY MAJOR INTERNATIONAL OIL COMPANIES IN THE PRODUCTION AND MARKETING OF CRUDE OIL ORIGINATING IN THE PERSIAN GULF. MISSIONS MAY DRAW ON THE GIVEN BACKGROUND MATERIAL TO EXPLAIN THAT THE INVESTIGATION DOES NOT INVOLVE NATIONAL OIL COMPANIES AND EXCLUDES ACTIONS TAKEN BY THE OIL COMPANIES UNDER THE COMPULSION OF A SOVEREIGN GOVERNMENT. IT MAY ALSO BE USEFUL TO ADD THAT BOTH PRODUCER STATES AND CONSUMERS HAVE A MUTUAL INTEREST IN SEEING THAT MARKET COMPETITION INSURES REASONABLY PRICED PETROLEUM PRODUCTS. VANCE

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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
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